

FITAPELLI & SCHAFFER, LLP

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROY JOHNSTON,

Plaintiff,

-against-

**SHOWROOM AUTO, LLC and BERNARD CHRIS
MERCEUS,**

Defendants.

15 Civ. 6428 (KAM)(PK)

**ANSWER TO
COUNTERCLAIM**

Plaintiff ROY JOHNSTON, by his attorneys Fitapelli & Schaffer LLP, hereby answers the counterclaim brought by Defendants SHOWROOM AUTO, LLC and BERNARD CHRIS MERCEUS on their Answer to Complaint (“the Answer”) as follows:

1. Responding to paragraph 55 of the Answer: This paragraph sets forth mere legal argument and conclusion to which no response is required. To the extent that such paragraph could be construed so as to set forth factual allegations requiring a response, such allegations are denied.

2. Responding to paragraph 56 of the Answer: This paragraph sets forth mere legal argument and conclusion to which no response is required. To the extent that such paragraph could be construed so as to set forth factual allegations requiring a response, such allegations are denied.

3. Responding to paragraph 57 of the Answer: This paragraph sets forth mere legal argument and conclusion to which no response is required. To the extent that such paragraph could be construed so as to set forth factual allegations requiring a response, such allegations are denied.

AFFIRMATIVE DEFENSES

Without assuming any necessary burdens of proof, Roy Johnston hereby asserts the following affirmative defenses:

1. The counterclaim fails to state a cognizable cause of action.
2. The counterclaim fails to state a claim upon which relief can be granted.
3. The counterclaim fails the basic rules of pleading, to wit: they fail to set forth a short and plain statement of any recognizable common-law or statutory claim under law that would entitle Defendants to relief, in accordance with the minimal, baseline requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure.
4. Defendants claims are barred, in whole or in part, because the applicable statute of limitations.
5. The counterclaim was made in retaliation of Plaintiff's protected activity under the FLSA, NYLL, and NYCHRL.
6. Plaintiff reserves the right to assert any and all additional defenses as may be appropriate based on continuing pleading, investigation, and discovery.

Dated: New York, New York
February 1, 2016

Respectfully submitted,

s/ Brian S. Schaffer

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